

REMARKS

The Final Office Action mailed April 29, 2005, has been received and reviewed. Claims 10, 11, 15 through 18, 21 through 23, 27, 29 through 32, 35 through 38, and 46 through 48 are currently pending in the application. Claims 10, 11, 15 through 18, 21 through 23, 27, 29 through 32, 35 through 38, and 46 through 48 stand rejected. Applicants propose to amend claims 10, 11, 15, 16, 29, and 35, and respectfully request reconsideration of the application as proposed to be amended herein.

Information Disclosure Statement(s)

Applicants note the filing of an Information Disclosure Statement herein on November 14, 2003 and note that no copy of the PTO/SB/08, as initialed by the Examiner, has been returned to Applicants' counsel. For your convenience, Applicants have enclosed a second copy of the November 14, 2003 Supplemental Information Disclosure Statement, PTO/SB/08, and a copy of the USPTO date-stamped postcard evidencing receipt of the same by the Office. Applicants respectfully request that the information cited on the PTO/SB/08 be made of record herein, and that a copy of the PTO/SB/08, as initialed by the Examiner, be returned to Applicants' counsel for their records.

35 U.S.C. § 103(a) Obviousness Rejections

Obviousness Rejection Based on U.S. Patent No. 4,376,118 to Daher et al. and U.S. Patent No. 5,972,373 to Yajima et al.

Claims 10, 11, 15 through 18, 21 through 23, 27, 29 through 32, 35 through 38, and 46 through 48 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Daher et al. (U.S. Patent No. 4,376,118) and Yajima et al. (U.S. Patent No. 5,972,373). Applicants respectfully traverse this rejection, as hereinafter set forth.

M.P.E.P. 706.02(j) sets forth the standard for a Section 103(a) rejection:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or**

references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

The applicant disagrees with the Examiner's reading of the Daher and Yajima references, since these references do not teach or suggest each and every element of the pending claims and because the references relate to oral and topical formulations that have a use that is entirely unrelated to the claimed invention. However, in order to expedite prosecution of the present application and without waiving any right to pursue the previously pending claims in a related application, applicant has amended independent claims 10, 11, 15, 16, 29, and 35 per the Examiner's suggestion (on page 5 of the final Office Action). Specifically, these independent claims have been amended to recite that the polymer consists of polyvinylpyrrolidone, the surfactant consists of glycerol monolaurate or polysorbate, and the solvent consists of lauryl lactate. In view of the amendments to the claims, applicant believes that the 35 U.S.C. § 103(a) obviousness rejections of claims 10, 11, 15 through 18, 21 through 23, 27, 29 through 32, 35 through 38, and 46 through 48 have been overcome. Reconsideration and allowance of the claims is respectfully requested.

ENTRY OF AMENDMENTS

The proposed amendments to claims 10, 11, 15, 16, 29, and 35 above should be entered by the Examiner because the amendments are supported by the as-filed specification and drawings and do not add any new matter to the application. Further, the amendments do not raise new issues or require a further search. Finally, if the Examiner determines that the amendments do not place the application in condition for allowance, entry is respectfully requested upon filing of a Notice of Appeal herein.

CONCLUSION

Claims 10, 11, 15 through 18, 21 through 23, 27, 29 through 32, 35 through 38, and 46 through 48 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues

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remain which might be resolved by a telephone conference, he is respectfully invited to contact Applicants' undersigned attorney.

Respectfully submitted,



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